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In the Supreme Court of the United States

OCTOBER TERM, 1950

ARTHUR E. JEFFERSON, PETITIONER

UNITED STATES OF AMERICA

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	4
Conclusion	5

CITATIONS

Cases:

<i>Feres v. United States</i> , No. 9, this Term	4
<i>Santana v. United States</i> , 175 F. 2d 320	5
<i>United States v. Griggs</i> , No. 31, this Term	4

Statutes:

Act of July 2, 1948, 62 Stat. 1219	3
Federal Tort Claims Act, 60 Stat. 842	2
Public Law 339, 81st Cong., 1st sess.	3

United States Code, Title 28:

Sec. 1346(b)	2
Sec. 1402(b)	2
Sec. 2674	2
Sec. 2680	2

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OCTOBER TERM, 1950

No. 29

ARTHUR K. JEFFERSON, PETITIONER

v.

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT*

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The two opinions of the district court (R. 4-16; 16-31) are reported at 74 F. Supp. 209 and 77 F. Supp. 706. The opinion of the United States Court of Appeals for the Fourth Circuit (R. 41-45) is reported at 178 F. 2d 518.

JURISDICTION

The judgment of the court of appeals was entered on December 19, 1949 (R. 45). A petition for a writ of certiorari was filed on February 18, 1950 and

granted on March 13 (R. 47). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether under the Federal Tort Claims Act a soldier, who, while on active duty and incident to his service, sustained personal injuries as a result of the negligence of other Army personnel, may recover damages for those injuries.

STATUTE INVOLVED

Sections 1346(b), 1402(b), 2674, and 2680 of Title 28, United States Code [formerly Tort Claims Act] are set forth in the Appendix to the Brief for the United States in *United States v. Griggs*, No. 31, this Term.

STATEMENT

On July 31, 1947, petitioner instituted this suit against the United States under the Federal Tort Claims Act for personal injuries resulting from an allegedly negligent surgical operation performed on him by an Army surgeon at Fort Belvoir, Virginia. The gravamen of his complaint was that "while on active duty as a member of the Army of the United States, [he] was caused to undergo an abdominal operation at Fort Belvoir Hospital, Fort Belvoir, Virginia," which was negligently "performed by a surgeon of the United States Army Medical Corps on active duty" (R. 1).

On October 23, 1947, the district court overruled without prejudice a motion by the United States to dismiss the complaint on the ground that a "suit by a former member of the Military Forces to recover

damages allegedly caused by a negligent abdominal operation performed on the soldier * * * by an Army surgeon in the State of Virginia * * * while both were on active duty * * * is not within the coverage of the [Federal Tort Claims] Act" (R. 4). The United States then filed an answer denying negligence on the part of the surgeon, and, as a separate defense, again alleged that the Federal Tort Claims Act does not authorize suit by military personnel or by former military personnel for injuries "caused by another member of the Armed Forces received by such person while a member of the Armed Forces" (R. 3).

After the trial, the district court found that the injuries were caused by the negligent abdominal operation performed on petitioner (R. 21); that he applied for and is receiving total disability benefit checks of \$138.00 monthly¹ from the United States for his injuries (R. 20); that he had received, as of April 30, 1948, the sum of \$3,645.50, and that, with an estimated life expectancy of 22 years, he would receive, under legislation then in effect, an additional \$31,947.00² from the United States (R. 20).

¹ As required by recent legislation, this monthly payment was first increased to \$159.00 (in accordance with the Act of July 2, 1948, 62 Stat. 1219) and was later increased to \$171.00, effective December 1, 1949, as required by Public Law 339, 81st Cong., 1st sess.

² This computation was based on the \$138.00 monthly payment and did not take into account the fact that, as of September 1, 1948, the monthly payment was increased to \$159.00 and that, on December 1, 1949, it was further increased to \$171.00. See fn. 1, *supra*.
~~increased to \$171.00. See fn. 1, *supra*.~~

The district court further stated that if plaintiff were entitled to recover at all under the Federal Tort Claims Act, these disability benefit payments must be treated in diminution of the amount of the verdict, and that the sum of \$7,500 would be an appropriate verdict (R. 21). However, since the district court concluded that as a matter of law, the Federal Tort Claims Act does not apply to soldiers' service-caused disabilities, the complaint was dismissed (R. 21, 31). The Court of Appeals for the Fourth Circuit affirmed (R. 41-45).

ARGUMENT

Like *United States v. Griggs* and *Feres v. United States* (Nos. 31 and 9, this Term), this case presents the question as to whether Congress intended the Federal Tort Claims Act to cover claims for the death or injury of a soldier, sustained incident to his military service and as a result of the negligence of other military personnel. The Brief for the United States in the *Griggs* case, No. 31, develops the reasons and authorities which, we submit, establish the correctness of the decision below in the instant case. In addition, the Brief for the United States in *Feres v. United States*, No. 9, undertakes to show that whether the soldier is injured or killed in service, allowing suit under the Federal Tort Claims Act would in either event subject military conduct to judicial review and thereby impair military discipline. Similarly, in the instant case, the

fact that petitioner is a discharged serviceman would in no way lessen that impairment.³

CONCLUSION

For the reasons set forth above and in the Brief for the United States in the *Griggs* case, No. 31, it is respectfully submitted that the judgment of the court below should be affirmed.

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³ *Santana v. United States*, 175 F. 2d 320 (C.A. 1), relied on in the Petition for Writ of Certiorari, p. 17, concerned injuries sustained not by a soldier, but by a civilian. As petitioner recognizes, that case differs from "the instant case in that [there] the tort was committed after the veteran had been discharged from the service." *Ibid.*